Supreme Court, U.S.
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No. 92-423

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

OWENS-ILLINOIS, INC.,
Petitioner

v.

FREDERIC E. ROBY and FRANCES A. SOLLY,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

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QUESTIONS PRESENTED

1. Do repetitive awards of punitive damages for the same course of conduct violate the Due Process Clause under the principles announced in *Pacific Mutual Life Insurance Co. v. Haslip*, 111 S. Ct. 1032 (1991)?

2. Is appellate review of a jury's award of punitive damages adequate under due process where neither the factors identified by the Court in *Haslip*, nor any similar factors, are taken into account?

3. Does Fed. R. Civ. P. 16 permit the admission of prejudicial evidence in direct contravention of a pretrial order?

RULE 29.1 STATEMENT

The statement required by Rule 29.1 was included in Petitioner's petition for certiorari.

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PETITIONER'S SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.7, Owens-Illinois, Inc. ("Owens-Illinois") files this Supplemental Brief to advise the Court of recent developments in the case law cited in support of Owens-Illinois' Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

In its Reply Brief in Support of the Petition for Writ of Certiorari Owens-Illinois discussed a case recently decided by the Third Circuit, *Dunn v. HOVIC*, 1992 U.S. App. LEXIS 22749 (3d Cir. Sept. 18, 1992). The Third Circuit has vacated the panel's decision in *Dunn*, and granted defendant's Petition for Rehearing and Suggestion for Rehearing *En Banc*. *Dunn v. HOVIC*, 1992 U.S. App. LEXIS 25457 (3d Cir. Oct. 8, 1992).

The Third Circuit's decision to rehear the *Dunn* case *en banc* is evidence of the continued activity and concern

in the lower courts generated by constitutional challenges to claims for punitive damages. The asbestos personal-injury litigation is the cause for much of this activity: indeed, Judge Weis filed a forceful dissenting opinion in *Dunn* based in large part on the number of asbestos personal injury claims and bankruptcy filings by asbestos defendants. Judge Weis advocated striking punitive damages claims from the asbestos personal injury litigation, arguing that "punitive damages should not be recovered because their purposes are not being served and their benefits are outweighed by their cost to society." *Dunn v. HOVIC*, 1992 U.S. App. LEXIS 22749 at *92 (3d Cir. Sept. 18, 1992) (Weis, J., dissenting), *vacated and petition for r'hrg en banc granted*, 1992 U.S. App. LEXIS 25457 (3d Cir. Oct. 8, 1992).

The Third Circuit's decision to re-examine *en banc* the due process concerns implicated by claims for punitive damages emphasizes the importance of this issue and the need for additional guidance from this Court.

Respectfully submitted,

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